

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:NR:DAL:2OKL:TL-N-5284-00
EFMoates

date: OCT 18 2000

to: Neva Jo Schreier, Team Manager (Natural Resources)
attn: Bryan Sewell, Senior Team Coordinator (Natural Resources)
from: Associate Area Counsel LMSB (Area 4)

subject: Request for Informal Advisory Opinion

Taxpayer: [REDACTED]

EIN [REDACTED]

Pursuant to your request our office has reviewed the following issues with regard to the above-referenced taxpayer:

1. Whether the oral claims that arguably are untimely are barred by the statute of limitations or are amendments to the timely filed claims.
2. Whether timely filed claims to recognize additional TJTC are valid when the taxpayer did not make corresponding reductions in wage expenses and pay the additional taxes due when the claims were filed.

In addition to the two issues above, the impact of the settlement initiative (Announcement 2000-58) as it relates to the above-referenced taxpayer is discussed.

CONCLUSIONS

The oral claims presented to the revenue agent during the week of [REDACTED] are amendments to the originals timely filed claims received on [REDACTED].

The timely filed claims to recognize additional TJTC are valid even if the taxpayer did not make corresponding reductions in wage expenses and pay the additional taxes due when the claims were filed. When the claims are allowed or partially allowed the wage expenses per I.R.C. § 280C must be adjusted by the Service. A closing agreement will be required to document the resolution of the issue and appropriate adjustment of the related matters.

Since, the taxpayer has indicated an interest in the settlement initiative, the Service should advise the taxpayer on the requirement to file an Indication of Interest in TJTC Settlement Program pursuant to Step 1 on Announcement 2000-58. The Service should secure the information required in Step 2 of Announcement 2000-58 and prepare a closing agreement for the taxpayer to execute pursuant to Step 3 of the Announcement.

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

FACTS

The statutes on the taxpayers' [REDACTED] and [REDACTED] Forms 1120 were extended by agreement to December 31, [REDACTED]. The statute on the taxpayers' [REDACTED] Form 1120 was September 15, [REDACTED]. On [REDACTED], the taxpayer filed Forms 1120X for the taxable years [REDACTED] and [REDACTED]. The amended returns were classified as "protective claims." The amended returns were filed to claim additional TJTC not claimed on the taxpayer's original returns. The increases were as follows:

<u>Tax Year</u>	<u>Additional TJTC</u>
[REDACTED]	\$ [REDACTED]
[REDACTED]	\$ [REDACTED]
[REDACTED]	\$ [REDACTED]

The Service received the original claims, but has not acted upon them to date. The Service allowed the statutes for the [REDACTED], [REDACTED] and [REDACTED] taxable years to expire and coded the claims with an "AA" status. Due to the taxpayer's current tax liability

position, the claims result in no tax refund for the [REDACTED], [REDACTED] and [REDACTED] taxable years. However, the claims do increase the available TJTC to be carried over to succeeding years.

The examination of the taxpayer's [REDACTED] thru [REDACTED] tax returns was completed with the issuance of a Revenue Agent's Report on [REDACTED]. On [REDACTED], the taxpayer's [REDACTED] account was assessed an additional tax liability of \$ [REDACTED]. The examination of the taxpayer's [REDACTED] and [REDACTED] returns resulted in credits of \$ [REDACTED] and \$ [REDACTED], respectively.,

The Service met with the taxpayer during the week of [REDACTED] concerning the TJTC. At that meeting, the taxpayer made the agent aware of additional TJTCs discovered during preparation for the meeting. The taxpayer had discovered numerous employees' TJTC requests had been omitted from their original claim file on [REDACTED]. They also determined that several of the employee wage amounts included in the claims had already been claimed on the original returns. This resulted in duplication of claimed TJTC:

The taxpayer indicated his awareness of the National Office settlement initiative for TJTC set forth in Announcement 2000-58. The taxpayer currently desires to participate in the settlement initiative, but wants to correct the claimed amounts on the Forms 1120X before entering this settlement.

DISCUSSION

It is clear that the claims filed on [REDACTED] are timely filed claims. At issue is whether oral claims presented the week of [REDACTED] were untimely and barred by the statute of limitations or are amendments to the timely filed claims.

I.R.C. § 6511(a) provides the general rule that a claim for credit or refund of an overpayment shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever is later. A special provision exists if, as here, the taxpayer executes an agreement to extend the period of limitations on assessment. Under such circumstances, section 6511(c) provides that the period for filing a claim for credit or refund shall not expire before six months after the expiration of the extension period.

In order to be a valid claim for refund, the claim must set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof. Treas. Reg. 301.6402-2(b)(1). Further, a taxpayer must file a separate claim covering each tax period for

which the taxpayer requests a refund. Treas. Reg. 301.6402-2(d). In this instance, the [REDACTED] claims set forth in detail the TJTC amounts claimed for each of the tax years.

Despite the requirements set forth in I.R.C. § 6402 and Treas. Reg. § 301.6402-2 that prescribe that a claim for refund must meet certain requirements, a document which fails to do so may, nevertheless, be considered an informal claim. The informal claim doctrine allows the Commissioner to waive the requirements of the Treasury Regulations governing claims for refund. United States v. Kales, 314 U.S. 186 (1941). Although the doctrine allows recognition of claims that are not in technical compliance with the prescribed forms, such claims must nonetheless meet certain requirements of clarity and specificity in content. Beckwith Realty, Inc. v. United States, 896 F.2d 860, 863 (4th Cir. 1990).

The Supreme Court, in Tucker v. Alexander, 275 U.S. 228, 231 (1927), considered the necessity for literal compliance with statutory and regulatory requirements with respect to claims for refund and remarked that both

may be insisted on by the [Commissioner] . . . The statute and the regulations must be read in light of their purpose. They are devised, not as traps for the unwary, but for the convenience of government officials in passing upon claims for refund . . . If the Commissioner is not deceived or misled by the failure to describe accurately the claims, as obviously he was not here, it may be more convenient for the government, and decidedly in the interest of an orderly administrative procedure, that the claim should be disposed of upon its merits. Tucker v. Alexander, 275 U.S. 228, 231 (1927).

In the instant case, the taxpayer orally informed the agent of the desire to amend or correct the original TJTC claims. This action was taken during a meeting held the week of [REDACTED].

A filed claim may be amended any time before it has been rejected and before the period of limitation for filing a claim has expired, i.e. the amendment and the original claim constitute a single claim. United States v. Memphis Cotton Oil Co., 288 U.S. 62 (1933). Furthermore, an untimely amendment of a timely general claim is effective if (1) the original claim has not been rejected at the time the amendment is filed and (2) the amendment merely makes clear specific matters the Service has already considered by investigating the original, formally defective claim. In this case the original claim had not been rejected at

the time the oral claim was presented during the week of [REDACTED], and the exact same issue (TJTC) was presented in the oral claim. As the Supreme Court concluded in Memphis Cotton Oil Company:

If the Commissioner holds the original claim without action until the form has been corrected and still more clearly if he hears it, and hears it on the merits, what is before him is not a double claim but a claim single and indivisible, the new indissolubly welded into the structure of the old. United States v. Memphis Cotton Oil Co., 288 U.S. 62, at 71 (1933).

In this situation, the oral amendments and the original claims constitute single timely claims because the Service has not acted on the claims and has not been asked to make any different inquiry other than those the timely claims requested.

It should be noted that the amendment of a timely specific claim is treated differently from the amendment of a general claim. A claim limited to a specific item may not be amended out of time to seek refund on account of other, unrelated items. United States v. Andrews, 302 U.S. 517 (1938). However, in this case, even if the original claims were considered timely specific claims, the amendments would still be allowed as the taxpayer is not seeking refunds on account of other, unrelated items.

As to the second issue, the validity of the claims is not impacted by the failure to make the corresponding reduction in wage expenses as required by I.R.C. § 280C. In issuing a allowance of the claims or a partial disallowance of the claims, the Service should take into account the reduction of wage expenses as required by section 280C. The taxpayer must execute a closing agreement (Form 906) to document the resolution of the issue and appropriate adjustment of related matters such as section 280C expenses.

If the taxpayer is interested in utilizing the settlement initiative contained in Announcement 2000-58, it must complete an Indication of Interest. The Indication of Interest must be mailed to the Internal Revenue Service, Kansas City Missouri 6499, Attn: QMSS, Stop 4100, Annex 2. The Indication of Interest must be completed no later than 120 days after [REDACTED].

We recommend that you advise the taxpayer in writing of the Indication of Interest requirement contained in Announcement 2000-58. We further recommend that you request the additional information the taxpayer is required to furnish pursuant to

Step 2 of Announcement 2000-58. A closing agreement will be required pursuant to Step 3 or the Announcement.

If you have any questions, please contact Edith Moates at (405) 297-4810.

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cc: Area Counsel (LMSB)